

CITY COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

LUCILLE TORNESE, Plaintiff,

against

CLICK, INC., Defendant.

STATE OF NEW YORK)
 :SS:
COUNTY OF NEW YORK)

HAROLD WEISSBERG, being duly sworn, deposes and says:

That in reply to the answering affidavit of John R. Whiting, I desire to point out the following:

With respect to the denial that I was paid for work that was not used in Click on a per diem basis, I am attaching herewith typical statements and stubs indicating bill and payment thereon where I was paid at the agreed rate of Ten (\$10.00) Dollars per day on an eight hour day basis, the time being computed in these bills in terms of hours and minutes. These include statements of January 11th and January 17th.

An examination of the foregoing statements will indicate that I was paid not only for time consumed but also for actual expenses in connection therewith. As a further example of this basis for payment I also refer to the Krupp Hirota story for which I was paid Sixty (\$60.00) Dollars for six days work although this story was never used by the defendant magazine for publication. In furtherance of this method of payment I was likewise on other occasions paid as their Washington representative for work that was assigned to me such as straightening out matters with the post office department, justice department and other departments, all at the rate of Ten (\$10.00) Dollars per day. The bills supplied herewith are only of a more recent nature.

With respect to the allegation by Mr. Whiting that the check paid to Mr. Rogers was to have included all monies due me, I respectfully point out that as late as February 5th, 1942 I was paid the sum of One Hundred (\$100.00) Dollars in pursuance of our agreement for the story "V Materials" which appeared in the April

I point out that the moneys I am now claiming were earned during a substantial portion of 1941, the year during which had been paid \$2,500.00 as referred to in Mr. Whiting's affidavit.

During my correspondence had with Mr. Joseph First who was referred to in Mr. Whiting's affidavit and more particularly in my letter addressed to him under date of March 3rd, 1942, I wrote to him in part as follows:

"I think you can now understand why I feel as I do about this matter, and I think it must be apparent to you why I consider I am being stalled. I see no reason why this should be. Upon your personal assurance that I am not being stalled, I will not immediately take further action. From what Bob Rogers has told me about you, I think I can take your word. In your concluding paragraph you refer to the income tax problem of your auditing department. In view of this, I don't suppose it is necessary to emphasize to you the importance to me of a rapid settlement of this matter because of my income tax problem. I trust you will, if it is within your province, see to it that this matter is settled immediately.

You will recall that in my letter I asked you to call me if there is any further explanation you desire. I do not now feel that you or CLICK need any further information, but if you feel otherwise, I repeat my telephone number is District 2108.

It will be noted that I offered to answer any and all questions and repeated my telephone number for that purpose. I anxiously stayed at home in order to await a telephone call on the following day, but none was forthcoming. Instead I received a letter under date of March 7th from Mr. First which letter was received nine days late because of it being improperly addressed to me, which letter and envelope is annexed hereto and in which Mr. First definitely states *** "you will be able to go back to Washington with a mutually agreeable check."

This letter was written to me after I had retained counsel and correspondence thereafter followed between my attorneys and Mr. First without any results.

I desire to further point out that I was present on the argument upon this matter yesterday morning and the attorney for the defendant let the proverbial cat out of the bag when he disclosed in open court that my claim had been approved by the editorial offices in New York and the general manager in Chicago and that Mr. First had my check in his possession when he wrote me under date of March 7th, 1942.

From this it can now be seen that the only purpose of protracted correspon-

Whiting knew the terms of compensation agreed to between Click and myself and further that the sworn statement of Mr. Whiting that I was "discharged" at the same time as Mr. Rogers, to wit; on or about January 27th, 1942, is false and fictitious. In addition there were other assignments that Mr. Whiting offered to me but some of which I did not undertake, all subsequent to the date of my alleged dismissal.

It is interesting to note that although the moving affidavits are numbered and although the complaint sets forth the exact names and titles of the services for which this action is based the defendant has offered a blanket denial of all of this material and states that I was paid therefor.

A reading of the documentary proof which has been attached to this affidavit and the attendant circumstances clearly dispels this defense. I further point out in the moving affidavit that although mention has been made that there is a serious question of the defendant continuing in business, the defendant has failed to deny this. Likewise although Patricia Conwell, the secretary of the defendant corporation is still in the employ of the defendant, she has not denied the statement contained in my moving affidavit that she had advised me over the telephone that my bill had been approved and that the check would be forthcoming from Chicago.

The "ancient and forgotten items" referred to by Mr. Whiting are matters which I had taken out of the Click file and personally delivered to Mr. Whiting on February 11th at the time of my final conference with him.

Further the statement by Mr. Whiting that the "\$300.00 for obtaining a transcript of testimony before a congressional committee was unreasonable since a \$15.00 per week messenger boy could have done the same thing in one afternoon", is frivolous and an imposition upon this Court when the services performed therein are definitely set forth in the moving affidavits and not disputed by Mr. Whiting. In view of all the foregoing, it is respectfully prayed that the plaintiff's motion for summary judgment be granted.

Sworn to before me this

10th day of June, 1942.

HAROLD WINTERMAN